

REMARKS/ARGUMENTS

A. AMENDMENTS TO THE CLAIMS

Claims 1-27 remain in this application. New claims 28-33 have been added. Claims 1, 7, 12-13, and 15-16 have been amended. No new matter has been added by these amendments.

B. CLAIM REJECTIONS

Claims 1-13 have been rejected by the examiner under 35 U.S.C. §103(a) as being unpatentable over Hanson et al. (U.S. Patent 6,457,045) (herein, Hanson) in view of Bowcutt et al. (U.S. Patent 6,308,328) (herein, Bowcutt). Claims 14-15 have been rejected by the examiner as unpatentable over Hanson in view of Bowcutt and further in view of Anderson et al. (U.S. Patent 4,290,141) (herein, Anderson). Claims 16-27 have been rejected by the examiner under 35 U.S.C. §102(e) as being anticipated by Hanson.

1. Rejections under 35 U.S.C. §103(a)

Claims 1-13 have been rejected by the examiner under 35 U.S.C. §103(a) as being unpatentable over Hanson in view of Bowcutt.

In order for a patent claim to be obvious, the prior art must teach or suggest each and every limitation of the claimed invention. That is because the claim must be considered as a whole; it may not be distilled down to a "gist" for purposes of obviousness analysis. MPEP 8th Ed. §2121.02 (Rev. 1).

(a) Independent Claim 1 and Dependent Claims 2-15

Independent claim 1 (as amended) recites the following limitations:

1. A method for influencing dynamic community shared elements of content programming comprising:
 - a plurality of participants obtaining electronic votes that they may later cast, wherein the electronic votes are obtained independent of a poll;
 - a polling server periodically polling the plurality of participants over a network for their opinion concerning the content of programming;
 - the plurality of participants casting their respective electronic votes concerning the content of programming via the network;

the polling server receiving the electronic votes of the participants,
tallying the electronic votes and reporting those results to a content server;
the content server receiving the votes and retrieving content based upon
the opinion expressed by a majority of electronic votes; and
delivering the retrieved content to the participants.

In rejecting claim 1, the examiner found that Hanson disclosed each of these limitations. In particular, the examiner cited Col. 1, lines 52-59 of Hanson as teaching the limitation “obtaining electronic votes that they may later cast:”

One type of group choice tool uses store and forward technology. Initially, a message is sent to participants who are expected to respond to the message with their choices. The participants can then read or respond to the message. Once the sender of the message receives a choice response from some or all of the participants, the sender may send a subsequent message back to the participants indicating the results of the choice making process. Hanson, Col.1, lines 52-59.

The quoted language from Hanson describes a participant receiving a message that creates a right in the participant to make a choice (i.e., to vote). The right to vote is created contemporaneously with receipt of the polling message (the “zaplet”). Thus, Hanson does not provide a right to vote separate from the “choice topic” that is to be voted on.

Claim 1 (as amended) provides for acquiring electronic votes independent of the receipt of the polling message, thereby separating the vote from the “choice topic.” According to the present invention, a participant may be polled, but unless the participant has obtained an electronic vote, the participant may not respond to the poll by voting. Hanson does not teach this limitation. Conversely, the invention as claimed allows a participant to obtain a vote, which, if not cast, may be used on another poll.

Claim 1 (as amended) also recites the limitations, “a polling server periodically polling a plurality of participants over a network for their opinion concerning the content of programming,” and “the content server receiving the votes and retrieving content based upon the opinion expressed by the majority of majority of electronic votes.” The present invention thus teaches taking a poll about the content of a program and delivering the content to a participant. By contrast, Hanson teaches presenting a choice to a group of participants and delivering the results of the choices made by the group to each participant.

Implementations of the invention include one or more of the following. The

choices may include a schedule, a poll, a survey, an election, RSVP, task allocation, wish lists, donation confirmation, approval, recruitment vote, group seating selection, game next move selection, sporting event pool, payment authorization, purchase selection, and purchase authorization. **The dynamic content may include graphics representative of the selected choices.** Hanson, Col. 2, line 64 through Col. 3, line 4. (Emphasis added by bolding.)

“Content” as used in Hanson refers to the results of an on-going voting process. The results of the vote in Hanson are not the content that is selected based upon the opinion expressed by the majority of electronic votes as disclosed in the present invention. Even if the teachings of Hanson were applied so as to allow participants to express an opinion about the content of programming, Hanson does not teach a mechanism for delivering the program content to the participants. While Hanson would provide the participants “graphics representative of the selected choices a selection,” the participants would not receive the programming content itself.

Because claim 1 in its amended form recites limitations not in the combination of Hanson and Bowcutt, claim 1 of the present invention is patentable over Hanson in view of Bowcutt. Applicant submits that claim 1 (as amended) is allowable over the cited prior art.

Dependent claims 2-13 were rejected by the examiner as unpatentable over Hanson in view of Bowcutt. Dependent claims 14-15 were rejected by the examiner as unpatentable over Hanson in view of Bowcutt and further in view of Anderson et al. Because claims 2-15 depend from claim 1 and comprise all of the limitations of claim 1 (as amended), claims 2-15 also recite limitations not disclosed in the combination of Hanson and Bowcutt and the combination of Hanson, Bowcutt, and Anderson. For this reason, dependent claims 2-15 are also patentable over the cited prior art.

(b) Independent Claim 16 and Dependent Claims 17-28:

Independent claim 16 (as amended) recites the following limitations:

16. A system for influencing dynamic community shared elements of content programming comprising:

a plurality of participant devices each associated with a participant connected to a network, the participant devices further comprising instructions for obtaining and casting electronic votes;
a transaction server connected to the network further comprising

instructions for receiving requests from the participant devices to obtain electronic votes, and instructions for delivering electronic votes to the participant devices over the network independent of a poll sent by a polling server;

the polling server connected to the network for receiving the electronic votes from the participant devices in response to polls sent by the polling server;

the polling server further comprising instructions for receiving and tallying the electronic votes received from the participant devices, and reporting the tally; and

a content server connected to the polling server for receiving the tally of the electronic votes, the content server further comprising instructions for modifying content served to the participant devices in response to the tally of electronic votes.

As previously noted, Hanson describes a participant receiving a message that creates a right in the recipient to make a choice (i.e., to vote) contemporaneously with receipt of the polling message. Claim 16 (as amended) recites a system adapted to acquire electronic votes independent of a poll sent by a polling server. Because claim 16 in its amended form recites limitations not disclosed by Hanson, claim 16 is not anticipated by, and is patentable over, Hanson. Applicant submits that claim 16 (as amended) is allowable over the cited prior art.

Claims 17-27 (as amended) depend from claim 16 and comprise all of the limitations of claim 16. Claims 17-27 therefore recite limitations not disclosed in Hanson and are, therefore, not anticipated by Hanson. Applicant submits that claims 17-27 are allowable over the cited prior art.

(c) New Claims 28-33

Newly added claims 28-33 recited limitations not disclosed in Hanson, specifically that the votes obtained by a participant are independent of any particular poll. Newly added claims 28-33 are, therefore, not anticipated by Hanson. Applicant submits that claims 28-33 are allowable over the cited prior art.

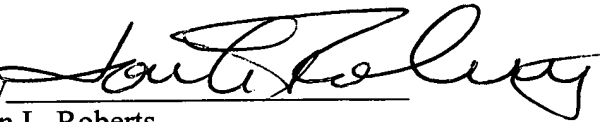
C. Conclusion

Applicant respectfully requests reconsideration of the current rejection. In view of the responses and remarks made above, Applicant further requests that that a timely Notice of Allowance be issued in this case.

D. Request For An Interview

Should any further questions arise concerning this application or in the event the above amendments do not place the application in condition for allowance, Applicant respectfully requests an interview with the examiner and the examiner's supervisor prior to any new office action relating to the present Application. Attorney for the Applicant may be reached at the number listed below.

Respectfully Submitted,

By 

Jon L. Roberts

Registration No. 31,293

Elliott D. Light, Esq.

Registration No. 51,948

Roberts Abokhair & Mardula, LLC

11800 Sunrise Valley Drive, Suite 1000

Reston, VA 20191

703-391-2900